

FOR IMMEDIATE RELEASE-

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For additional information, please contact:

Amber Quaid
Communications Specialist
Center for Arkansas Legal Services
501-376-3423 ext. 1125
1300 W. 6th Street
Little Rock, AR 72201
aquaid@arkansaslegalservices.org

CDC Issues Federal Eviction Moratorium to Halt Spread of COVID

LITTLE ROCK, Ark., Sept. 2, 2020- The Centers for Disease Control and Prevention has issued a broad, [national moratorium on evictions](#) for nonpayment of rent from Sept. 4 until Dec. 31, 2020. Tenants seeking protection under the moratorium are required to submit a declaration to their landlord regarding their inability to make rent payments despite good faith efforts. Those who violate the order are subject to severe criminal penalties, including fines of \$100,000 or more, imprisonment, or both.

Citing the coronavirus pandemic and the increased risks that homelessness and housing instability pose for those facing eviction, the CDC order prohibits residential evictions at all stages. This sweeping order applies to residential housing regardless of whether it is funded by the federal government, unlike the previous moratorium under the Coronavirus Aid, Relief, and Economic Security Act.

According to the [Stout Interactive Eviction Tool](#), which utilizes Census Bureau estimates, approximately 139,000 rental households in Arkansas were unable to make rent and are at risk for eviction as of late July. At that time, Arkansas tenants were behind on rent by an estimated \$126 million.

“Given the underlying policy behind the order, although they are not expressly mentioned, this should apply to pending evictions,” said Lynn Foster, retired UA Little Rock Law School professor and authority on landlord-tenant law. “The whole point of the order is to keep people from homelessness or having to move into crowded quarters.”

“Criminal evictions” or “failure to vacate” prosecutions should also be prohibited under the order according to Kendall Lewellen, Housing Law Practice Group Leader for the Center for Arkansas Legal Services. Arkansas is the only state in the country that provides for the criminal prosecution of tenants who are late on rent payments.

“Self-help evictions” or evictions performed by a landlord without a court order, are typically carried out by changing the locks or shutting off utilities, and are clearly illegal under Arkansas law, and under this CDC order landlords who carry these out could be subject to stiff criminal penalties.

The moratorium does not prohibit evictions for reasons other than nonpayment of rent. It also does not relieve tenants of any obligation to pay rent owed or any late fees or other penalties. This concerns housing advocates who say that allowing rent and late fees to accrue will simply delay inevitable evictions and create additional financial hardship for renters.

“Many tenants are already several months behind on their rent,” said Lewellen. “They will probably face eviction when the moratorium expires at the end of the year unless they can produce thousands of dollars for back rent. This can cause a domino effect of problems in their lives--from losing their homes, jobs, and even their children.”

In his September 2 daily COVID briefing, Governor Hutchinson noted that tenants are required under the order to make their best efforts to obtain government assistance if they are behind on rent, and urged tenants to go to their local community action agencies and community nonprofit organizations to obtain rental assistance. He also referenced rental assistance to public housing agencies through the Arkansas Development Finance Authority.

While assistance may be available, many of these programs place strict income eligibility limits on those who can receive assistance. Terry Bearden, Chief Operations Officer for the Arkansas Community Action Agencies Association, says that community action agencies limit eligibility to families whose income is within 125% of federal poverty guidelines, which is roughly \$27,150 for a family of three. “Most agencies have had to set a maximum benefit amount at between \$500 and \$650 to feel secure in their abilities to be able to serve enough people. I fear that those amounts will not be enough to pay past due rent amounts and several agencies have already exhausted available funding for this year,” she said.

Rental assistance is also hard to find. There is currently no centralized clearinghouse of available resources for renters who are struggling to pay rent. “It’s all piecemeal,” said Foster. “The accident of where one lives may determine whether they can even get any real help at all.”

Landlords are also concerned about how they will be able to make ends meet without comprehensive rental assistance. Mark Robertson of Little Rock is a small property owner and worries about what this will mean for him and his tenants. “If any of my four tenants don’t pay

rent, I lose everything,” he said. “My bank doesn’t care and wouldn’t even discuss a deferment in my mortgage so I could try to help my tenants. Insurance won’t help. Taxes are not being deferred or waived. I’m not alone.”

To avoid eviction, a tenant or resident must submit a declaration to their landlord that includes: statements about their efforts to obtain government assistance, their income, their inability to pay rent due to loss of income or work or significant medical expenses, their efforts to try to make full or partial rent payments, and the likelihood that eviction would cause them to live in a homeless shelter or another residence that would place them in close quarters with others. The CDC order includes a form declaration, which must be signed under penalty of perjury.

The Center for Arkansas Legal Services and Legal Aid of Arkansas will provide a sample declaration and instructions on their statewide website at www.arlegalservices.org. Free legal assistance may be available for affected tenants. Individuals in Central, Southern, and Western Arkansas may apply for assistance from the Center for Arkansas Legal Services at call 501-376-3423 or visit www.ArkansasLegal.org. Individuals in Northwest Arkansas, North Central Arkansas, as well as the Jonesboro and West Memphis areas can apply for assistance from Legal Aid of Arkansas at 1-800-952-9243 or www.arlegalaid.org.

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About the Center for Arkansas Legal Services and Legal Aid of Arkansas

There are only two organizations in Arkansas that provide free civil legal services, the Center for Arkansas Legal Services and Legal Aid of Arkansas. Together these non-profit organizations serve all 75 counties in Arkansas and provide free legal services to low-income Arkansans with civil legal problems, including criminal record sealing, eviction defense, foreclosure prevention, consumer issues, housing, help for victims of domestic abuse, and representation in public benefits.



**CDC ORDER
(COVID-19)-
TEMPORARY HALT
IN RESIDENTIAL
EVICTIONS
-FACT SHEET-**

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HELPLINE: 501-376-3423

CDC ORDER- TEMPORARY HALT IN RESIDENTIAL EVICTIONS TO PREVENT THE FURTHER SPREAD OF COVID-19



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- FACT SHEET -

EFFECTIVE DATES: FRIDAY, SEPT. 4, THROUGH THURSDAY DEC. 31, 2020.

Summary: The U.S. Centers for Disease Control and Prevention has issued a broad, national ban on evictions for nonpayment of rent from September 4, 2020, until December 31, 2020. A landlord cannot evict a tenant who meets the conditions in the order (i.e. is trying to pay the rent but can't because of loss of income or medical expenses) and has delivered a declaration so stating to the landlord from residential property, until after December 31. Each tenant on the lease must deliver a declaration. A person who violates the order is subject to criminal penalties of a fine, jail, or both, with more serious penalties if violation causes a death. The moratorium does not mean that tenants are relieved of their obligation to pay rent, late fees, and other costs under the lease. But it does mean that tenants who meet the conditions laid out in the order cannot be evicted for nonpayment until after Dec. 31. A tenant who violates the lease in other ways, or who does not meet the conditions or deliver a declaration can still be evicted now.

HOW CAN TENANTS USE THIS ORDER?

Please read the sample Declaration on the following page and make sure that it applies to your situation. Tenants should call their local community action agency and public housing authority for rental assistance before signing the declaration. If it applies to you, sign the declaration and provide it to your landlord. It is best to deliver it by certified mail, email, or in front of a witness. Please contact your local legal aid organization for advice about your specific situation.

WHAT DOES “EVICT” MEAN?

Any action by a landlord etc. to remove or cause the removal of a covered person from a residential property. (p. 10). This should prohibit all phases of the eviction process (issuance of notices to vacate, filing unlawful detainer actions, holding hearings, entering judgments for possession and writs of restitution, physical execution of writ).

DOES THIS APPLY TO FAILURE TO VACATE OR “CRIMINAL EVICTION” CASES?

The Order does not directly address that because Arkansas is the only state in the country with a failure to vacate law. However, a tenant may raise any defense in a failure to vacate case that would serve as a defense to a civil eviction. **Munson v. Gilliam**, 543 F.2d 48 (8th Cir.1976). Therefore, this Order should prevent failure to vacate prosecutions for covered persons.

WHO IS A LANDLORD?

An owner of residential property OR other person with a legal right to pursue eviction or possessory action. This order does not apply to hotels, motels, or guest houses.

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WHO IS A “COVERED PERSON”? (PP. 9-10)

A tenant, lessee, or resident of a residential property who provides to their landlord a declaration under penalty of perjury indicating that:

- The individual has “used best efforts” to obtain “all available government assistance” for rent; AND
- The individual either:
 - Expects to earn no more than \$99K in income during 2020 OR Was not required to report any 2019 income to IRS OR Received a CARES Act stimulus check; AND
 - The individual can’t pay the full rent due to: Substantial loss of household income OR Loss of compensable hours of work or wages OR A layoff OR An unreimbursed medical expense likely to exceed 7.5% of the individual’s adjusted gross income for the year; AND
 - The individual is “using best efforts” to make “timely partial payments” as close to the full payment as circumstances permit, taking other nondiscretionary expenses into account; AND
 - Eviction is likely: Render the individual homeless OR Force the individual to live in close quarters in a new living situation, because of no other options.

LANDLORDS CAN EVICT TENANTS WHO:

- Engage in criminal activity while on the premises;
- Threaten the health or safety of other residents;
- Damage or pose an immediate and significant risk of damage to property;
- Violate any applicable building code, health ordinance, or similar regulation relating to health and safety; or
- Violate any other contractual obligation, other than rent payment or similar housing-related payment INCLUDING late fees, penalties, or interest.

HOW WILL THIS ORDER BE ENFORCED?

There are strong criminal penalties for people and organizations that violate this Order. If a violation does not result in death, an individual found in violation of this Order could face a minimum fine of \$100,000, one year in jail, or both. A company or other organization found in violation of this Order would face a minimum fine of \$200,000 per offense. Individuals and organizations will face enhanced penalties if violations result in death.

**A TENANT COULD ALSO ENFORCE THIS ORDER
THROUGH CIVIL LITIGATION, SUCH AS RAISING IT
AS A DEFENSE IN AN EVICTION CASE.**

DECLARATION TO TEMPORARILY HALT EVICTION TO PREVENT THE FURTHER SPREAD OF COVID-19

This declaration is for tenants, lessees, or residents of residential properties who are covered by the CDC's order temporarily halting residential evictions (not including foreclosures on home mortgages) to prevent the further spread of COVID-19. Under the CDC's order you must provide a copy of this declaration to your landlord, owner of the residential property where you live, or other person who has a right to have you evicted or removed from where you live. Each adult listed on the lease, rental agreement, or housing contract should complete this declaration. Unless the CDC order is extended, changed, or ended, the order prevents you from being evicted or removed from where you are living through December 31, 2020. You are still required to pay rent and follow all the other terms of your lease and rules of the place where you live. You may also still be evicted for reasons other than not paying rent or making a housing payment. This declaration is sworn testimony, meaning that you can be prosecuted, go to jail, or pay a fine if you lie, mislead, or omit important information.

I certify under penalty of perjury, pursuant to 28 U.S.C. 1746, that the foregoing are true and correct:

- I have used best efforts to obtain all available government assistance for rent or housing;
- I either expect to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), was not required to report any income in 2019 to the U.S. Internal Revenue Service, **OR** received an Economic "Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
- I am unable to pay my full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary out-of-pocket medical expenses;
- I am using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses;
- If evicted I would likely become homeless, need to move into a homeless shelter, or need to move into a new residence shared by other people who live in close quarters because I have no other available housing options.
- I understand that I must still pay rent or make a housing payment, and comply with other obligations that I may have under my tenancy, lease agreement, or similar contract. I further understand that fees, penalties, or interest for not paying rent or making a housing payment on time as required by my tenancy, lease agreement, or similar contract may still be charged or collected.
- I further understand that at the end of this temporary halt on evictions on December 31, 2020, my housing provider may require payment in full for all payments not made prior to and during the temporary halt and failure to pay may make me subject to eviction pursuant to State and local laws. I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.

Signature of Tenant/Declarant

Date